

UNIFORMED SERVICES FORMER SPOUSES' PROTECTION ACT—



MILITARY OFFICERS ASSOCIATION of AMERICA

a guide
to **ELIGIBILITY**
and **ENTITLEMENT**



MOAA
Military Officers Association of America

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Uniformed Services Former Spouses' Protection Act— A Guide to Eligibility and Entitlement

A Publication of The Military Officers Association of America

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of the Benefits Information Department

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INTRODUCTION

The Uniformed Services Former Spouses' Protection Act (FSPA), P.L. 97-252 of Sept. 8, 1982 as amended, provides numerous benefits for former spouses of retirees of the Uniformed Services. The benefits include direct payments from retired pay for child support, alimony, or as a division of property. The law also deals with Survivor Benefit coverage for a former spouse as well as criteria that must be met to qualify for medical, commissary, exchange, and MWR benefits. This booklet will also address the subject of Tax Reporting for Division of Military Retired Pay as property under FSPA.

This booklet is not an official publication of the Uniformed Services. This booklet contains the provisions of law in effect on the date of publication. It will be revised as updated laws and regulations are changed. It is not intended as a definitive guide but as a source document to assist members in their discussions with legal counsel, legal assistance officers, and domestic law specialists.

Part 1

FSPA and Retired Pay for Members of the Uniformed Services

Public Law 97-252 contains the basic Uniformed Services Former Spouses' Protection Act (USFSPA), effective February 1, 1983, wherein an unremarried and, in some cases, a remarried former spouse of a military member has entitlement to certain military-related benefits and privileges. Since its initial enactment the law has been amended several times. The original law and its amendments are codified in Title 10, United States Code, Sections 1072(F), 1076(b), 1086(b), 1408, 1447(6)–(10), 1448(b)(1), P.L. 99-661 and Section 652, P.L. 100-456, September 29, 1988; Section 1402, P.L. 101-189, November 29, 1989; Section 555, P.L. 101-510, November 5, 1990; and Section 637, P.L. 104-201, September 23, 1996. Guidelines for implementing the former spouse payments from military retired pay are found in the Department of Defense Financial Management Regulation, DoD 7000.14-R, Volume 7B, paragraphs 60301–60312 as amended. (Those portions of the law which pertain directly to the Uniformed Services Survivor Benefit Plan—SBP—and medical, commissary, and exchange benefits are addressed later in this booklet).

The USFSPA is the legislative tool by which the federal government can be required to send up to 50 percent of the service member's disposable military retired pay directly to the former spouse as property. Award must be made by a state court. The important point here is that the USFSPA does NOT automatically divide retired pay as property. However, it does authorize state courts to treat military retired pay either as property of the retiree or as the property of the retiree and his spouse in accordance with the law of the jurisdiction of such courts, i.e. the USFSPA permits a court to award a portion of military retired pay to a former spouse as his or her property. (This is in addition to any other court-award spousal and/or child support and/or division of other marital property.) While a court may award more than 50 percent of a retired service member's pay check to the former spouse as property, the Government is authorized only to send up to 50 percent of "disposable" retired pay directly to the former spouse as property.

Disposable Retired Pay

"Disposable" retired pay is the gross monthly pay entitlement, including renounced pay, less authorized deductions [as defined in 10 U.S. Code, Section 1408(a) (4) of P.L. 97-252, as amended by P.L. 99-661, November 14, 1986 and Section 555 of P.L. 101-510, November 5, 1990].

For divorces, dissolutions of marriage, annulments, and legal separations that became effective before February 3, 1991, the authorized deductions are:

- a. Amounts owed to the United States.
- b. Amounts required by law to be deducted from a member's pay.
- c. Fines and forfeitures ordered by a court-martial.
- d. Amounts waived in order to receive compensation under Titles 5 or 38 of the United States Code.
- e. *Federal employment taxes and income taxes* withheld to the extent that the amount deducted is consistent with the member's tax liability, including amounts for supplemental withholding under 26 U.S. Code 3402(i) when the member pre-

sents evidence to the satisfaction of the designated agent that supports such with holding. (*State employment taxes and income taxes* when the member makes a voluntary request for such withholding from retired pay and the Uniformed Services have an agreement with the State concerned for withholding from retired pay.)

f. Premiums paid as a result of an election under 10 U.S. Code Chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order.

g. The amount of the member's retired pay under 10 U.S. Code Chapter 61 computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list), for court orders issued after November 14, 1986.

For divorces, dissolutions of marriage, annulments, and legal separations that become effective on or after February 3, 1991, the authorized deductions are:

a. Amounts owed to the United States for previous overpayments of retired pay and the recoupments required by law resulting from entitlement to retired pay.

b. Forfeitures of retired pay ordered by court-martial.

c. Amounts waived in order to receive compensation under Title 38 of United States Code (Veterans Administration Disability Compensation).

d. Premiums paid as a result of an election under 10 U.S. Code Chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order.

e. The amount of the member's retired pay under 10 U.S. Code Chapter 61 computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list).

A court may treat disposable retired or retainer pay payable to a member for pay periods beginning on or after June 26, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse **(A)** was issued before June 26, 1981, and **(B)** did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse. This applies to judgments issued before, on, or after November 5, 1990. In the case of a judgment issued before November 5, 1990, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on November 5, 1990. Notwithstanding any other provision of law, the preceding does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse.

The subject of tax reporting of such payments by the military retiree and the former spouse is discussed later in this booklet.

Courts can treat military retired pay as marital property without regard to duration of marriage during military service. However, to be eligible for a direct disbursement of military retired pay as property from the Defense Finance and Accounting

Service Center or finance center, a former spouse must have been married to the military member for 10 years or more during which time the member performed 10 years service creditable for military retirement. Court-ordered payments for child support and/or alimony do not require a specified length of marriage.

The question of alimony and/or child support is normally open for review by a state court depending on changed circumstances.

Section 637 of P.L. 104-201, enacted on September 23, 1996 (with an effective date of January 1, 1997) deals with the prevention of circumvention of a court order dividing military retired pay as property incident to a divorce by waiver of military retired pay to enhance a Civil Service/FERS retirement annuity. Section 637 is quoted as follows: "If, after January 1, 1997, an employee or Member waives retired pay that is subject to a court order for which there has been effective service on the Secretary concerned for purposes of section 1408 of title 10, the military service on which the retired pay is based may be credited as service for purposes of this subchapter only if the employee or Member authorizes the Director of the Office of Personnel Management to deduct and withhold from the annuity payable to the employee or Member under this subchapter an amount equal to the amount that, if the annuity payment was instead a payment of the employee's or Member's retired pay, would have been deducted and withheld and paid to the former spouse covered by the court order under such section 1408. The amount deducted and withheld under this paragraph shall be paid to that former spouse. The period of civil service employment by the employee or Member shall not be taken into consideration in determining the amount of the deductions and withholding or the amount of the payment to the former spouse. The Director of the Office of Personnel Management shall prescribe regulations to carry out this paragraph.

NOTE: The sole purpose of this Section is to acquaint you with the basic facts of this subject as they pertain to military retired pay. For answers to specific questions concerning your own situation, we would recommend your discussing full details of the legislation with a qualified attorney within the state where the decree of divorce was/will be granted.

Part 2

Former Spouse Payments from Retired Pay

BACKGROUND

Public Law 97-252 (as amended by Public Laws 98-252, 99-661, and 101-501) authorizes direct payments to a former spouse from the retired pay of a member in response to court-ordered alimony, child support, or division of property.

PURPOSE

This section reports Department of Defense implementing procedures to effect the deduction of former spouse payments from retired pay.

DEFINITIONS

Alimony. Periodic payments for support and maintenance of a spouse or former spouse in accordance with state law under 42 U.S.C. 662. Alimony includes, but is

not limited to, spousal support, separate maintenance, and maintenance. Alimony does not include any payment for the division of property.

Annuitant. A person receiving a monthly payment under a survivor benefit plan related to retired pay.

Child Support. Periodic payments for the support and maintenance of child(ren) subject to and in accordance with state law under 42 U.S.C. 662(b). Child support includes, but is not limited to, payments to provide for health care, education, recreation, and clothing, or to meet other specific needs of such child(ren).

Court. Any court of competent jurisdiction of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, as well as any court of the United States (as defined in 28 U.S.C. 451) having competent jurisdiction; or any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

Court Order. As defined under 10 U.S.C. 1408(a)(2), a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court-ordered, ratified, or approved property settlement incident to such a decree. A court order includes a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court-ordered, ratified, or approved property settlement incident to such previously issued decree. A court order must stipulate the payment to a member's former spouse of child support, alimony or division of property. In the case of a division of property, the court order must specify that the payment is to be made from the member's disposable retired pay.

Creditable Service. Service counted towards the establishment of any entitlement for retired pay.

Designated Agent. The representative of a Uniformed Service who will receive and process court orders under this Chapter.

Division of Property. Any transfer of property or its value by an individual to his or her former spouse in compliance with any community property settlement, equitable distribution of property, or other distribution of property between spouses or former spouses.

Entitlement. The legal right of the member to receive retired pay.

Final Decree. As defined under 10 U.S.C. 1408(a)(3), a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

Former Spouse. The former husband or former wife of a member.

Garnishment. The legal procedure through which payment is made from an individual's pay, that is due or payable to another party in order to satisfy a legal obligation to provide child support, to make alimony payments, or both, or to enforce a division of property [other than a division of retired pay as property under 10 U.S.C. 1408(d)(5)].

Renounced Pay. Retired pay to which a member has an entitlement, but for which receipt of payment has been waived by the member.

Retired Member (Retiree). A person originally appointed or enlisted in, or conscripted into, a Uniformed Service who has retired and is now carried on one of the lists of retired personnel from the Regular or Reserve Components of the Uniformed Services.

Retired Pay. The gross entitlement due a member based on conditions of the retirement law, pay grade, years of service for basic pay, years of service for percentage multiplier, if applicable, and date of retirement (transfer to the Fleet Reserve or Fleet Marine Corps Reserve); also known as retainer pay.

Uniformed Services. The Army, Marine Corps, Navy, Air Force, Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

ELIGIBILITY OF FORMER SPOUSE

A former spouse is eligible to receive direct payments from a retiree's retired pay if the court order satisfies the requirements and conditions specified for such payment as set forth in this chapter. In the case of a division of property, the court order specifically must provide that payment is to be made from disposable retired pay.

To establish eligibility for a court-ordered division of retired pay as property, the former spouse must have been married to the member for 10 years or more during which time the member performed 10 years creditable service. Court-ordered payments for child support and/or alimony do not require a specified length of marriage.

APPLICATION BY FORMER SPOUSE

The former spouse must initiate the effective service through notification of the designated agent. The notification is by facsimile or electronic submission, by mail, or by personal service. Effective service is accomplished when a complete application is received by the appropriate designated agent. The designated agent shall note the date and time of receipt on the notification document.

The notification is a signed statement or a signed DD Form 2293 (**Request for Former Spouse Payments from Retired Pay**) by the former spouse that includes:

- a.** Notice to make direct payment to a former spouse from the member's retired pay.
- b.** A certified copy of the court order and other certified accompanying documents, if applicable, that provide for payment of child support, alimony, or division of property.
- b.** A statement that the court order has not been amended, superseded, or set aside;
- d.** Sufficient information to identify the retired member so the application can be processed. The identification should give the retiree's full name, social security number, and Uniformed Service;
- e.** The full name, social security number, and address of the former spouse;
- f.** Personal agreement, prior to payment, that any future overpayments are recoverable and subject to involuntary collection from the former spouse or his or her estate;
- g.** Personal agreement, prior to payment, to notify the designated agent promptly if the court order upon which the payment is based is vacated, modified, or set aside. The former spouse also must notify the designated agent upon remarriage if all or part of the payment is for alimony or of any change in eligibility for child support payments as a

result of the child's death, emancipation, adoption, or attainment of majority if payment is for child support.

If the court-ordered division of retired pay as property does not state that the former spouse satisfied the eligibility criteria above, the former spouse must furnish sufficient evidence for the designated agent to verify eligibility.

The designated agent for each Uniformed Service is:

Defense Finance and Accounting Service; Cleveland
ATTN: DFAS-GAG/CL
P. O. Box 998002
Cleveland, OH 44199-8002
Telephone: (216) 522-5301
(Customer Service)

United States Coast Guard
Commanding Officer
United States Coast Guard
Human Resources Service and Information Center (L)
444 S.E. Quincy Street
Topeka, KS 66683-3591
Tel: 1-800-772-8724
(Also use for the **National Oceanic and Atmospheric Administration**)

Public Health Service
Office of General Counsel
Department of Health and
Human Service, Room 5362
330 Independence Avenue, SW
Washington, D.C. 20201
Tel: 1-800-638-8744

U.S. Attorneys are not designated agents authorized to receive court orders or garnishments under this chapter.

The designated agent will respond to the former spouse, who makes an application, not later than 90 days after effective service:

- a. If the court order will be honored, the former spouse shall be informed of the date that payments tentatively will begin; the amount of each payment; the amount of gross retired pay, total deductions, and disposable retired pay (except in cases where full payment of a court-ordered fixed amount will be made); and other relevant information, if applicable; or
- b. If the court order will not be honored, the designated agent shall explain in writing to the former spouse why the court order was not honored.

REVIEW OF COURT ORDERS

The acceptable form of a court order that directs payments to a former spouse shall be:

- a. A final decree
- b. Regular on its face. This means the court order is issued by a court of com-

petent jurisdiction in accordance with the laws of that jurisdiction.

c. Legal in form and include nothing on its face that provides reasonable notice that it is issued without authority of law. The court order must be authenticated or certified within the 90 days immediately preceding its service on the designated agent.

If the court order was issued while the member was on active duty and the member was not represented in court, the court order or other court document shall certify that the rights of the member were observed under the 50 App. U.S.C.A., Section 501-591. The court order must contain sufficient information to identify the retiree.

Additionally, a court order that stipulates a division of retired pay as property must meet the following conditions:

- a.** The court must have jurisdiction over the retiree by reason of his or her:
 - (1) Residence, other than because of military assignment, in the territorial jurisdiction of the court.
 - (2) Domicile in the territorial jurisdiction of the court; or
 - (3) Consent by the retiree to the court's jurisdiction.
- b.** The treatment of retired pay as property solely of the retiree or as property of the retiree and the former spouse of that retiree shall be in accordance with the law of the jurisdiction of such court.
- c.** The court order or other accompanying documents served with the court order must show that the former spouse was married to the member during 10 years or more of creditable service.

Any court order that awards a division of retired pay as property, which was issued before June 26, 1981, will be honored if it otherwise satisfies the requirements and conditions shown in this chapter. A modification on or after June 26, 1981, of a court order which originally awarded a division of retired pay as property prior to June 26, 1981, may be honored if subsequent court-ordered changes were made for clarification purposes. For example, a subsequent court order may provide a clarifying interpretation of a computation formula that was included in the original court order. For a court order issued before June 26, 1981, a subsequent amendment after that date to provide for division of retired pay as property is unenforceable under this chapter. A court order awarding a division of retired pay as property that is issued on or after June 26, 1981, will be enforced if otherwise satisfying the requirements and conditions of law.

The court order shall require payment of child support or alimony or, in the case of a division of property, specifically provide for the payment of an amount of disposable retired or retainer pay, expressed as a dollar amount or as a percentage. Court orders specifying a percentage or fraction of retired pay shall be construed as a percentage or fraction of disposable retired pay. A court order that stipulates a division of retired pay by means of a formula wherein the elements of the formula are not specifically set forth or readily apparent on the face of the court order will not be honored unless clarified by the court.

The Secretary of the Uniformed Service Department concerned (or designee) may refuse service of a court order that is an out-of-state modification and does not comply with the court order provisions, unless the court issuing that order has jurisdiction, as shown above, over both the retiree and the spouse or former spouse involved. A court order is considered an out-of-state modification if the court order:

- a. Modifies a previous court order upon which payments are based; and
- b. Is issued by a court of a state other than the state of the court that issued the previous court order.

GARNISHMENT ORDERS

If a court order stipulates a division of property other than retired pay in addition to specifying an amount of disposable retired pay to the former spouse, the former spouse may garnish the retiree's retired pay to enforce the division of property. The designated agents authorized to receive service of process shall be those listed on page 9. The amount payable to the former spouse is limited under 15 U.S.C. 1673.

Garnishment orders for divisions of property, other than retired pay, shall be processed in the manner prescribed in 5 CFR, part 581.

LIMITATIONS

Divorces, Dissolutions of Marriage, Annulments, and Legal Separations that Become Effective Before Feb. 3, 1991. Upon proper service, a retiree's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount does not exceed:

- a. Fifty percent of disposable retired pay for all court orders and garnishment actions paid under the law.
- b. Sixty-five percent of disposable retired pay for all court orders and garnishments paid under this chapter and garnishments paid under 42 U.S.C. 659.

Divorces, Dissolutions of Marriage, Annulments, and Legal Separations that Become Effective on or After Feb. 3, 1991. Upon proper service, a retiree's retired pay may be paid directly to a former spouse in the amount necessary to comply with the court order, provided the total amount paid does not exceed:

- a. Fifty percent of disposable retired pay for all court orders and garnishment actions.
- b. Sixty-five percent of the remuneration for employment as defined under 42 U.S.C. 659 and 662 for all court orders and garnishments as above and garnishments paid under 42 U.S.C. 659.

Disposable Retired Pay. Disposable retired pay is the gross pay entitlement, including renounced pay, less authorized deductions. Disposable retired pay does not include annuitant payments under 10 U.S.C., Chapter 73. For court orders issued on or before Nov. 14, 1986 (or amendments to such court orders), disposable retired pay does not include retired pay of a member retired for disability under 10 U.S.C., Chapter 61. The authorized deductions are:

- a. For divorce, dissolution of marriage, annulment, or legal separation that became effective before Feb. 3, 1991:
 - (1) Amounts owed to the United States.
 - (2) Amounts required by law to be deducted from a member's pay.
 - (3) Fines and forfeitures ordered by a court martial.
 - (4) Amounts waived in order to receive compensation under Title 5 or Title 38, United States Code.
 - (5) *Federal employment taxes and income taxes* withheld to the extent that the amount is consistent with retiree's tax liability, including amounts for supplemental withholding under 26 U.S.C. 3402(i) when he or she presents evidence to the satisfaction of the designated agent that supports such withholding. *State employment*

taxes and income taxes are withheld when the retiree makes a voluntary request for such withholding from retired pay and the Uniformed Services have an agreement with the state concerned for withholding from retired pay.

(6) Premiums paid as a result of an election under 10 U.S.C., Chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such retiree's retired pay is being made pursuant to a court order under this chapter.

(7) The amount of the retiree's retired pay under 10 U.S.C., Chapter 61 computed using the percentage of his or her disability on the date when he or she was retired (or the date on which his or her name was placed on the temporary disability retired list), for court orders issued after Nov. 14, 1986.

b. For divorces, dissolutions of marriage, annulments, or legal separations that become effective on or after Feb. 3, 1991:

(1) Amounts owed to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay.

(2) Forfeitures of retired pay ordered by a court martial.

(3) Amounts waived in order to receive compensation under Title 38, United States Code.

(4) Premiums paid as a result of an election under 10 U.S.C., Chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this chapter.

(5) The amount of the retiree's retired pay under 10 U.S.C., Chapter 61 computed using the percentage of his or her disability on the date when he or she was retired (or the date on which his or her name was placed on the temporary disability retired list).

NOTIFICATION OF MEMBER

The designated agent will send a written notice to the affected retiree at his or her last known address not later than 30 days after effective service of a court order or garnishment action described in this chapter.

The notice shall include:

a. A copy of the court order and accompanying documentation.

b. An explanation of the limitations placed on the direct payment to the former spouse;

c. A request that the retiree submit notice to the designated agent if the court order has been amended, superseded, or set aside; (the member must provide an authenticated or certified copy of the court documents when there are conflicting court orders);

d. The dollar amount or percentage of disposable retired pay that will be deducted if the retiree fails to respond to the notification as prescribed by law;

e. The effective date that payments to the former spouse will tentatively begin;

f. A notice that the retiree's failure to respond within 30 days of the date that notification is mailed may result in the payment of retired pay as set out in the notice to the member;

g. The statement that if the retiree submits information in response to this notification, he or she thereby consents to the disclosure of such information to the former spouse or the former spouse's agent.

The designated agent will consider any response by the retiree and will not honor the court order if it is defective or modified, superseded, or set aside.

LIABILITY OF THE DESIGNATED AGENT

The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired or retainer pay to any retiree, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made according to law.

Any officer or employee of the United States who has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him or her in carrying out any of the duties which directly or indirectly pertain to answering such interrogatories.

If a court order on its face appears to conform to the laws of the jurisdiction from which it was issued, the designated agent will not be required to ascertain whether the court had obtained personal jurisdiction over the retiree.

Whenever a designated agent is effectively served with interrogatories concerning implementation of this chapter, the designated agent shall respond to such interrogatories within 30 calendar days of receipt or within such longer period as may be prescribed by applicable state law.

PAYMENTS

Contingent on the retiree's eligibility for retired pay and the effective service of a court order, the Uniformed Service concerned shall start payments to the former spouse not later than 90 days after the date of effective service.

Payment will conform with the normal pay and disbursement cycle for military retired pay.

Payments may be in a fixed-dollar amount or based on a percentage or fraction of disposable retired pay. Payments based on a percentage or fraction will increase in direct proportion with, and at the effective date of future cost-of-living adjustments, unless the court directs otherwise.

Payments terminate on the date of death of the retiree, death of the former spouse or as stated in the court order, whichever occurs first. Payments shall also be terminated or reduced upon the occurrence of a condition under the applicable state or local law that requires termination or reduction.

When several court orders are served on a retiree's retired pay, payments will be satisfied on a first-come, first-served basis within the limitations outlined above.

In the event of effective service of conflicting court orders which direct that different amounts be paid during the month to the same former spouse from a given retiree's retired pay, the designated agent will authorize payment on the court order directing payment of the least amount. The difference in amounts will be held by the designated agent pending resolution by the court with jurisdiction or by agreement of the parties. The amount held will be paid as provided in a subsequent court order or agreement. The total of payments released and monies held will be within the limitations outlined above.

The designated agent shall comply with a stay of execution issued by a court of competent jurisdiction and shall suspend payment of disputed amounts pending resolution of the issue.

When service is made and the identified retiree is found not be currently entitled to payments, the designated agent shall advise the former spouse that no payments are due from or payable by the Uniformed Service to the named individual. If the member is on active duty when service is accomplished, the designated agent shall retain the application until the member's retirement. In such case, payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the retiree first becomes entitled to receive retired pay. If the retiree becomes entitled to receive retired pay more than 90 days after first being notified under section "Notification of Member", above, the notification procedures prescribed above shall be repeated by the designated agent.

If net pay is only temporarily exhausted or otherwise unavailable, the former spouse shall be fully advised of the reason or reasons why and for how long such funds will be unavailable. Service shall be retained by the designated agent and payments to the former spouse, if otherwise proper, shall begin not later than 90 days from the date the retiree becomes entitled to receive retired pay. If the retiree becomes entitled to receive retired pay more than 90 days after first being notified as indicated above, the notification procedures prescribed above shall be repeated by the designated agent.

If the gross amount of retired pay is not sufficient to cover all authorized deductions and collections, refer to the order of precedence for disbursement in the Treasury Financial Manual for Guidance of Departments and Agencies. The court-ordered payments to a former spouse will be enforced over other voluntary deductions and allotments from retired pay.

Payments to the former spouse are prospective in terms of the amount stated in the court order and arrearages will not be considered in determining the amount payable from retired pay.

No right, title, or interest that can be sold, assigned, transferred, or otherwise disposed of including by inheritance, is created under the law.

The former spouse may be required to submit a signed certification of continued eligibility upon request of the designated agent. The certification of eligibility for the former spouse will include a notice of a change in status or circumstances that affects eligibility. If the former spouse fails or refuses to comply with the certification requirement, payments may be suspended or terminated after notice to the former spouse.

For divorce, dissolution of marriage, annulment, or legal separation that became effective on or after Feb. 3, 1991, payments to a former spouse for a division of property are excluded in determining a retiree's gross wages concerning retired pay.

RECONSIDERATION

A retiree or a former spouse may request that the designated agent reconsider the designated agent's determination in response to service of an application for payment under this chapter or the member's answer to the designated agent with respect to notice of such service. For reconsideration, the request must express the issues that the retiree or the former spouse believes were incorrectly resolved by the designated agent. The designated agent shall respond to the request for reconsideration, giving an explanation of the determination reached.

Part 3

Tax Reporting for Division of Military Retired Pay Under the USFSPA

P.L. 101-510, enacted on November 5, 1990, Section 555 stipulates “Payments by the service secretary concerned under [10 U.S.C. 1408] subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member’s spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.” This change in law deals with the method of reporting of the taxation of military retired pay that is payable to a former spouse and applies only to those divorces, dissolutions of marriage, annulments and legal separations that became effective on or after February 3, 1991.

As a result of this law, the Defense Finance and Accounting Service (DFAS) - Cleveland Center or respective finance centers now issue IRS Form 1099-Rs to former spouses for payments of court-ordered divisions of military retired pay (as property) made for divorces, etc., effective after February 2, 1991. Retirees’ IRS Form 1099-Rs reflect net retired pay (gross retired pay minus gross payment to the former spouse). Retiree’s tax withholding will be based on gross pay after the deduction of the division of property payment to the former spouse.

As a result of written IRS guidance to the DFAS, division of property payments for divorces effective on or before February 2, 1991 are also subject to tax withholding and tax reporting. The authority for this tax revision is 26 U.S. Code, Section 3405. The following DFAS guidance is provided for divorces effective on or before February 2, 1991:

Effective January 3, 1995, division of property is being reported as taxable income to the IRS and former spouses will receive 1099-Rs.

If the former spouse does not complete and return a Form W-4P, taxes for division of property will be withheld based on married with three dependents. Tax withholding was effective with the January 3, 1995 payment. All withholding is reported on the 1099-Rs. The retiree’s tax withholding is based on gross pay before the deduction of the division of property payments to the former spouse.

Examples of 1099-Rs mailed beginning in January 1996:

\$10,000.00	Retiree’s Gross Pay (Tax Year 1995)
\$ 2,000.00	Retiree’s Tax Withholding (Tax Year 1995)
\$ 4,000.00	Division of Property Payment (Tax Year 1995)
\$ 400.00	Former Spouse’s Tax Withholding (Tax Year 1995)

The retiree’s gross pay is reduced by the former spouse’s division of property payment (\$10,000.00 minus \$4,000.00 or \$6,000.00) and reported as taxable income in blocks 1 and 2a of the 1099-R. The \$2,000.00 tax is reported in block 4 of the 1099-R. The former spouse’s division of property payment of \$4,000.00 is reported as taxable income in blocks 1 and 2a of the 1099-R. The \$400.00 is reported in block 4 of the 1099-R.

Part 4

ID Cards for Former Spouses

If you were married to your former spouse for at least 20 years during his/her 20 years of military service creditable for retirement, the former spouse may be eligible for a military ID card which will authorize medical care, post exchange and commissary benefits. This applies to a former spouse who has not remarried. If the former spouse had 20 years of qualifying service and you were married at least 20 years during which at least 15 years overlap with 15 qualifying years of military service, you may be entitled up to one year of military medical care but no commissary or exchange privileges. Again, you must be an unremarried former spouse with no employer-sponsored health insurance.

For more specific information on commissary, exchange and medical benefits for former spouses, please refer to Part 5 of this booklet.

For official information on this subject we also recommend that you contact the nearest military ID card issuing office of the parent service.

Initial verification must be accomplished by the parent service:

- ◆ Army – The nearest Army issuing activity
- ◆ Navy – Bureau of Naval Personnel (PERS-334C), 5720 Integrity Drive, Millington, TN 38055-0000
- ◆ Air Force – The nearest Air Force issuing activity
- ◆ Marine Corps – Commandant of the Marine Corps (CMC) (MMSR-6), 2 Navy Annex, Washington, DC 20380-1775
- ◆ Coast Guard – Commanding Officer (RAS), Coast Guard Human Resources Service and Information Center (HRSIC), 444 S.E. Quincy Street, Topeka, KS 66683-3591.
- ◆ National Oceanic and Atmospheric Administration – Commissioned Personnel Center CPCI, Office of NOAA Corps Operations, East-West Highway, Room 12100, Silver Spring, MD 20910.
- ◆ United States Public Health Service – Personnel Services Branch, DCP, Parklawn Building, Room 4-35, 5600 Fishers Lane, Rockville, MD 20857.

Processing the application for an ID card will require the following documents:

- a. Certified copy of marriage certificate
- b. Certified copy of final divorce decree
- c. Any documents you may have concerning the spouse's period of service. This is not mandatory since it is the service's responsibility to verify periods of service.
- d. Notarized statement that you have not remarried.
- e. Notarized statement that you do not have medical coverage under an employer-sponsored health plan. Provide the name, address, and telephone number of your employer.

Part 5

Medical, Commissary, Exchange, and MWR Benefits for Former Military Spouses

Title 10, U.S. Code, Sections 1072, 1078a, and 1086a, prescribe medical benefits for former spouses under the Former Spouses' Protection Act (FSPA). A breakdown of these benefits is shown below. Questions concerning medical, commissary, exchange, MWR, and ID card benefits for former spouses should be addressed to the parent service, if possible, or to the nearest Uniformed Services ID Card issuing office for advice. See Part 4 for the mailing address for each Uniformed Service.

Various Categories and Eligibility Criteria

Unremarried Former Spouse 20/20/20 Rule (Never Remarried or Remarriage Annulled)

ELIGIBILITY: (in years)	Marriage:	20 minimum	
	Service Creditable for Retirement:	20 minimum	
	Overlap of Marriage and Service:	20 minimum	
BENEFITS:	Commissary: Yes	Exchange:	Yes
	MWR: Yes	Medical Coverage:	Yes*

Unremarried Former Spouse 20/20/15 Rule Divorce Before 1 April 1985 (Never Remarried or Remarriage Annulled)

ELIGIBILITY: (in years)	Marriage:	20 minimum	
	Service Creditable for Retirement:	20 minimum	
	Overlap of Marriage and Service:	15 minimum	
BENEFITS:	Commissary: NO	Exchange:	NO
	MWR: NO	Medical Coverage:	YES*

Unremarried Former Spouse 20/20/15 Rule Divorce After 31 March and Before 29 September 1988

BENEFITS: Former spouses in this category no longer have any entitlement to ID card, Commissary, Exchange, MWR, or Medical benefits.

* Medical coverage is authorized provided former spouse does not have an employer-sponsored health plan.

**Unremarried Former Spouse
20/20/15 Rule Divorce on or
After 29 September 1988
(Never Remarried or Remarriage Annulled)**

ELIGIBILITY: (in years)	Marriage:	20 minimum	
	Service Creditable for Retirement:	20 minimum	
	Overlap of Marriage and Service:	15 minimum	
BENEFITS:	Commissary:	NO	Exchange: NO
	MWR:	NO	Medical Coverage: YES*

* Medical coverage is authorized for one year after divorce provided the former spouse does not have an employer-sponsored health plan. Upon expiration of this one-year period, the former spouse is entitled to elect coverage within 60 days, at a cost, under a Department of Defense continued health benefits program. Additional information concerning this “conversion” policy, known as the Continued Health Care Benefit Program (CHCBP), can be obtained by writing or calling:

CHCBP ADMINISTRATOR
PO BOX 1608
ROCKVILLE, MD 20849-1608
1-800-809-6119

**Unremarried Former Spouse
No Minimum Service/Marriage Period
(Never Remarried or Remarriage Annulled)**

Effective 1 October 1994

BENEFITS:	Commissary:	NO	Exchange:	NO
	MWR:	NO	Medical Coverage:	YES *

* No military ID card will be issued. However, unremarried former spouses have the right to elect, within 60 days of divorce, health coverage, at a cost, under a CHCBP. See previous notes for address and telephone number.

**Unmarried Former Spouse
20/20/20 Rule
(Remarried and Marriage Ended by Death or Divorce)**

ELIGIBILITY: (in years)	Marriage:	20 minimum	
	Service Creditable for Retirement:	20 minimum	
	Overlap of Marriage and Service:	20 minimum	
BENEFITS:	Commissary: YES	Exchange:	YES
	MWR: YES	Medical Coverage:	NO

**FORMER SPOUSE IN RECEIPT OF AN ANNUITY AS A
RESULT OF A MEMBER BEING SEPARATED FROM THE
SERVICE DUE TO MISCONDUCT INVOLVING
DEPENDENT ABUSE [10 U.S.C. 1408(h)]**

Eligibility Criteria: **10-20-10 Rule**
(Unremarried or Unmarried)

Years of Marriage:	At least 10
Years of Creditable Service by Retiree:	At least 20
Years of Overlapping of Marriage and Service:	At least 10

Medical Benefits are Authorized as Follows:

a. Medical Care:

- (1) Yes, only if former spouse certifies in writing that he or she has no medical coverage under an employer sponsored health plan.
- (2) Yes, except an individual is not entitled to MC if the individual is:
 - (a) Entitled to Medicare Part A; or
 - (b) Under 65 years of age, entitled to Medicare Part A hospital insurance, and not enrolled in Medicare Part B supplemental medical insurance.
- (3) Yes, if the final decree of divorce, dissolution, or annulment of the marriage was on or after October 23, 1992.

b. Medical Support:

Items a1 and 3 above only.

Commissary, MWR, and Exchange Benefits Authorized

Eligibility Criteria: **10-20-10 Rule**
(Remarried)

Years of Marriage:	At least 10
Years of Creditable Service by Retiree:	At least 20
Years of Overlapping of Marriage and Service:	At least 10

Medical, Exchange, Commissary, and MWR Benefits are not Authorized.

TRICARE STANDARD and EXTRA:

- a.** If the date of the final divorce, dissolution or annulment is before January 1, 1985, eligibility does not begin until January 1, 1985. If the date of divorce, dissolution, or annulment is between January 1, 1985 and April 1, 1985, the eligibility date is the date of the divorce, dissolution, or annulment. Eligibility continues indefinitely unless affected by any of the following conditions:
- (1) Must be unremarried
 - (2) Must not be covered by an employer-sponsored health plan
 - (3) Must have been married to a member or former member who performed at least 20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay
 - (4) Must not be eligible for Part A of Title XVIII of the Social

Security Act (Medicare)

(5) Must not be the dependent of a NATO member.

b. If the date of the final decree of divorce, dissolution, or annulment is on or after April 1, 1985, but before September 29, 1988, the former spouse is eligible only for care received from the date of the divorce, dissolution, or annulment until December 31, 1988, or for two years from the date of the divorce, dissolution, or annulment, whichever was later.

c. If the date of the divorce, dissolution, or annulment is on or after September 29, 1988, the former spouse is eligible only for care received within the 365 days (366 in the case of a leap year) immediately following the date of the divorce, dissolution, or annulment.

Exceptions to these TRICARE Standard/Extra conditions are as follows:

a. Former spouses are eligible for benefits under the Basic Program only, and are classified as dependents of retirees. In accordance with 10 USC 1079(d), they are not eligible for any benefits under the Program for the Handicapped.

b. These former spouse provisions do not apply to CHAMPVA.

c. In order to be eligible, a former spouse must have been married for at least 20 years to one individual. A former spouse who was married to two individuals, each marriage lasting less than 20 years but both marriages totaling 20 years or more, is not eligible for TRICARE Standard/Extra, even if all other conditions are met.

d. When eligibility ceases for a former spouse who is eligible under the guidelines of 1 through 3 above, limited TRICARE Standard/Extra coverage may be extended for pre-existing conditions, for an additional 24 months from the date of termination of that coverage, if the following conditions were/are met:

CONTINUED HEALTH CARE BENEFIT PROGRAM (CHCBP)

To be eligible for CHCBP, a former spouse must be a person who:

a. Is an unremarried former spouse of a member or former member of the Uniformed Services (for purposes of this program, there is no time requirement regarding the length of time the former spouse was married to the member or former member);

b. On the day before the date of the final decree of divorce dissolution, or annulment was covered under a health benefits plan under TRICARE or Transitional Assistance Management Program (TAMP) as a dependent of the member or former member; and,

c. Is not eligible for TRICARE Standard/Extra as a former spouse of a member or former member (as described in the sections above).

With regard to period of coverage under CHCBP, for the unremarried former spouse, the parameters are as follows:

a. For an unremarried former spouse of a member or former member, coverage under the CHCBP is limited to 36 months after the later of:

(1) The date on which the final decree of divorce, dissolution or annulment occurs; or

(2) The date, which is one year after the date of the divorce, dissolution, or annulment, if the former spouse is eligible for one-year transitional coverage under TRICARE Standard/Extra.

(3) The date the member became ineligible for medical and dental

care under a military health care plan as an active duty member or the date the member first ceases to be eligible for care under TAMP, whichever is later, if the former spouse first meets the requirements for being considered as unremarried former spouse during a period of continued coverage of that member for self and dependents.

- b. The limitations described in (1) above do not apply and the length of coverage can be for an unlimited period of time, if the former spouse:
- (1) Has not remarried before the age of 55; and
 - (2) Was enrolled in the CHCBP as the dependent of an involuntarily separated member during the 18-month period before the date of the divorce, dissolution, or annulment; and
 - (3) Is receiving any portion of the retired or retainer pay of the member or former member or an annuity based on the retired or retainer pay of the member; or
 - (4) Has a court order for payment of any portion of the retired or retainer pay; or
 - (5) Has a written agreement (whether voluntary or pursuant to a court order) which provides for an election by the member or former member to provide an annuity to the former spouse.

Former military spouses divorced after August 1, 1994, who lose their TRICARE Standard/Extra benefits can extend their health coverage for 18 months by enrolling in the Continued Health Care Benefit Program, which charges a premium. To be eligible, however, former spouses must sign up within 60 days of losing TRICARE Standard/ Extra. Spouses whose 60 days have elapsed, but who were unaware of the new coverage can now enroll in the program for retroactive coverage. The effective date of their coverage must be the date they lost TRICARE Standard/Extra; it can be as far back as Oct. 1, 1994, when the program started. New participants must pay premiums retroactively.

Note: For information on and an application for CHCBP, please write or call:

Humana Military Healthcare Services, Inc.
Attn: CHCBP
P. O. Box 740072
Louisville, KY 40201
1-800-444-5445, option 4

Part 6

Former Spouse Coverage Under the SBP/SSBP Programs

Background:

Section 1003 of the Former Spouses' Protection Act amended the basic SBP law to include former spouses. However, Section 1003 did not amend certain pre-existing characteristics of the SBP most notably the irrevocability of SBP elections made by members upon retirement. As a result, DoD interpreted the Section 1003 SBP amend-

ments as authorizing former spouse SBP elections only by military members who retired on or after Sep. 8, 1982, and who elected such former spouse SBP coverage upon retirement. Under that interpretation, members who retired before Sep. 8, 1982, or who became divorced after retirement regardless of the retirement date, could not elect SBP for their respective former spouses.

With the enactment of Section 941 of P.L. 98-94 (Sep. 24, 1983), SBP participants who retired before Sep. 8, 1982, were permitted to name former spouses as insurable interest beneficiaries during an open season between Sep. 24, 1983, and Sep. 23, 1984.

Section 644 of P.L. 98-525 (Oct. 19, 1984) permitted former spouses to have SBP insurable interest elections deemed on their behalf if the military member agreed to name them as beneficiaries and the agreement is included in court-ordered property settlement agreements or divorce decrees. In Sections 716, 723, and 724 of P.L. 99-145 (Nov. 8, 1985), Congress further amended SBP to allow members to elect SBP coverage for former spouses in more types of situations, include a former spouse-and-children option if the child was born of that marriage, and provide coverage for a former spouse under “spousal” costing rather than the “insurable interest” costing. Section 641 of P.L. 99-661 (Nov. 14, 1986), provided state courts with the option of ordering military service members to participate in SBP and to designate a former spouse as beneficiary as part of a divorce agreement. This applies to court orders issued on or after Nov. 14, 1986. Section 645 authorizes members who elected former spouse coverage during the period Nov. 8, 1985, through Feb. 28, 1986, to convert to former spouse and child coverage by Nov. 14, 1987.

Members Who May Elect or Be Required to Elect SBP for Former Spouses

A member who has a former spouse upon becoming eligible to participate in the SBP (i.e. upon retirement for *most* members) may elect to provide an SBP annuity to that former spouse [10 U.S.C. Section 1448 (b)(2)] or a court order may require a person to elect (or to enter into an agreement to elect) to provide an annuity to a former spouse or to both a former spouse and child [10 U.S.C. Section 1450(n)]. Such elections are subject to the following rules:

- ◆ If the member has a spouse or a dependent child by the spouse, the election of SBP coverage for the former spouse precludes payment of SBP to the spouse or child of that spouse (10 U.S.C. Section 1448(b)(2)), other than a child who is a beneficiary under the following paragraph.
- ◆ If a member elects coverage for a former spouse, the member may elect coverage under that annuity for both the former spouse and a dependent child if the child resulted from the member’s marriage to that former spouse [10 U.S.C. Section 1448(a)(4)].
- ◆ If the member has more than one former spouse, the member must designate which former spouse is to receive the annuity [10 U.S.C. Section 1448(b)(2)].
- ◆ If the member is married and elects SBP coverage for a former spouse, the member’s present spouse must be notified of such election. [10 U.S.C. Section 1448 (a)(3)].
- ◆ The member must, at the time of making the election for a former spouse,

provide the DFAS or Finance Center with a written statement. It must be signed both by the member and the former spouse, setting forth whether the election is made pursuant to the requirement of a court order or whether the election is being made pursuant to a written agreement entered into voluntarily by the member as a part of or incident to a proceeding of divorce, dissolution or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by a court order [10 U.S.C. Section 1448 (b)(5)].

- ◆ If a member makes a voluntary, written agreement of any election for SBP coverage for a former spouse, incident to a proceeding of divorce, dissolution, or annulment, and such an agreement has been incorporated in, or ratified, or approved by a court order, or if such a person is required by a court order to make such an election, and the member then fails or refuses to make the SBP election, such member shall be deemed to have made such an election if the DFAS or Finance Center receives a written request from the former spouse concerned requesting that such an election be deemed to have been made. [Deemed Elections are addressed on pages 25 (SBP) and 28 (SSBP)].

A retired member who is providing SBP coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage) can elect to provide an SBP annuity to his former spouse and child of that marriage to the former spouse [10 U.S.C. Section 1448(b)(3)] or can be required by a court order to make such an election. Such elections by retired members are subject to the following rules:

- ◆ The former spouse must not have been the member's former spouse when the member became eligible to participate in the SBP [10 U.S.C. Section 1448(b)(3)(A)(iii)].
- ◆ Any such election for a former spouse terminates any previous SBP coverage [10 U.S.C. Section 1448(b)(3)].
- ◆ Any such election must be written, signed by the member and received by the DFAS or Finance Center within one year after the date of the decree of divorce, dissolution, or annulment [10 U.S.C. Section 1448(b)(3)(A)].
- ◆ The election must not be for a former spouse whom the member married after becoming eligible for retired pay unless the member was married to the former spouse for at least one year, or the former spouse is the parent of issue by that marriage [10 U.S.C. Section 1448(b)(3)(B)].
- ◆ If the member is married, the member's spouse will be notified of the member's election to cover a former spouse [10 U.S.C. Section 1448(b)(3)(D)].
- ◆ The member must, at the time of making the election for a former spouse, provide the DFAS or Finance Center with a written statement, signed by both the member and the former spouse, setting forth whether the election is being made pursuant to the requirements of a court order or whether the election is being made pursuant to a written agreement entered into by the member as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so) whether such written agreement has been incorporated in, ratified, or approved by a court order [10 U.S.C. Sections 1448 (b)(4)].
- ◆ The election of SBP for the former spouse can be revoked only in accordance

with 10 U.S.C. Section 1450(f) (explained below) [10 U.S.C. Section 1448(b)(3)(C)].

Revocation of Former Spouse SBP Coverage

A member who elects to provide an annuity to a former spouse or to both a former spouse and dependent child may, subject to statutory rules summarized below, change that election and provide an annuity to his spouse or dependent child.

In all cases, the member's service is required to notify the former spouse of any such change in an SBP election [10 U.S.C. Section 1450 (f)(1)]. If the member's previous election of SBP coverage for the former spouse (or to both a former spouse and dependent child) was made pursuant to a court order to provide such an annuity or if a member enters into a written agreement (whether voluntary or required by a court order) to make such an election pursuant to such an agreement, and the agreement has been incorporated in, ratified or approved by a court order, the member must furnish to the DFAS or Finance Center a certified copy of a court order that is regular on its face and modifies all previous court orders relating to the agreement to elect SBP coverage for the former spouse and certify to the DFAS or Finance Center that the court order furnished under the above subparagraph is current and in effect. The court order rescinding the requirement contained in the original order must be obtained during the first year of remarriage [10 U.S.C. Section 1450 (f)(2)(A)].

If the member's previous election of SBP coverage for the former spouse was made pursuant to a written agreement with the former spouse entered into as a part of or incident to, a proceeding of divorce, dissolution, or annulment, but the agreement has not been incorporated in, ratified, or approved by a court order, the member must furnish to the DFAS or Finance Center a statement signed by the former spouse evidencing the former spouse's agreement to the change in the election and certify to the DFAS or Finance Center that the former spouse's statement is current and in effect. Such a change can only be only with the former spouse's written concurrence [10 U.S.C. Section 1450(0 (2)(B))].

SBP Deemed Election

Section 644 of P.L. No. 98-525 provided the former spouse of a retired member with a means whereby, without the member's actually making a former spouse election, the former spouse could obtain a so-called "deemed former spouse" SBP election. The deemed former spouse SBP election procedure was subsequently revised by section 722 of P.L. 99-145 and section 641 of P.L.. 99-661. These provisions are codified in 10 U.S.C. Section 1450(f)(3). A member's former spouse may obtain a deemed former spouse election by satisfying the conditions set forth in the following subparagraphs.

- a.** The former spouse must submit a written request for the election. The written request should identify the member by name and Social Security number and provide the former spouse's Social Security number, date of birth and current mailing address.
- b.** The former spouse's written request must be accompanied by:
 - (1) a certified copy of a court order issued on or after Nov. 14, 1986, regular on its face, that requires the member to make a former spouse election; or
 - (2) a certified copy of a court order, regular on its face, that incorporates, rati-

- fies, or approves the member's written agreement to make such an election; or
- (3) a statement from the clerk of the court or other appropriate official that the member's written agreement to make a former spouse election has been filed with the court in accordance with applicable state law.
- c. In order to be effective, the former spouse's request for a deemed former spouse election must be received by the applicable DFAS or Finance Center within **one** year of the date of the court order or filing involved.
- d. If the member is not required by a court order [as defined by 10 U.S.C. Section 1447(8)] issued on or after Nov. 14, 1986, to make a former spouse election, the former spouse's request for a deemed former spouse election must show the following:
- (1) The member agreed, in writing, incident to a proceeding of divorce, dissolution, or annulment, to elect to provide an annuity for the former spouse under 10 U.S.C. Section 1448(b); and
 - (2) The member's written agreement was incorporated in, or ratified or approved by, a court order, or the member's written agreement has been filed with the court of appropriate jurisdiction in accordance with applicable state law.
- e. The member must have been eligible to make a former spouse election under the SBP statute, and the member must have failed or refused to make such an election.
- f. A deemed former spouse election becomes effective on the first day of the first month that begins after the date of the court order or filing involved. [10 U.S.C. § 1450(f)(3)(C)].

Former Spouse SBP Costs

Costs and annuities for former spouse elections made before Mar. 1, 1986, are computed by the same formula used to compute costs and annuities for insurable interest coverage. For former spouse elections effected on or after Mar. 1, 1986, costs and annuities are computed by the same formula used to compute costs and annuities for spouse coverage [10 U.S.C. Section 1450(a)].

A member who before Mar. 1, 1986, had elected former spouse coverage under the insurable interest provision, had until Nov. 8, 1986, to change to the spouse coverage and costing. Any such change was subject to the written concurrence of the former spouse [10 U.S.C. Section 1450(c)].

If a member before Mar. 1, 1986, was a participant in SBP and did not elect to provide SBP for a former spouse, the member could elect if the election was made before Nov. 8, 1986 [10 U.S.C. Section 1450(d)].

Potpourri

Former spouses are not automatically covered beneficiaries under SBP. A former spouse is covered under the SBP through a former spouse election under the insurable interest cost option or the spousal cost option made by the member concerned, provided the member's election of former spouse coverage complies with the terms and conditions of Subchapter II of Chapter 73, Title 10, U.S. Code, regarding such elections or through a court order requiring such an election.

Accordingly, a former spouse is not automatically a covered beneficiary if the member concerned dies without making a former spouse election, even if the mem-

ber previously elected spouse coverage at a time when the former spouse was married to the member. Similarly, a former spouse is not a covered beneficiary if the member concerned declines, for whatever reason, to elect former spouse coverage, even if the member has no other eligible SBP beneficiaries unless he is under a court order that confirms his election to provide SBP to a former spouse or he is under a court order requiring such an election and the former spouse requests or files a valid request for a deemed election.

Former spouse coverage is not affected by the remarriage of the former spouse under the insurable interest cost option. This means that a member cannot suspend former spouse coverage under this option on the basis of the remarriage of the former spouse. Payment of an SBP annuity to a former spouse under this option is not interrupted by the former spouse's remarriage. Likewise, a former spouse's SBP annuity is not subject to Social Security or DIC offsets under the insurable interest cost option.

Former spouse coverage under the spousal cost option generates all the restrictions inherent with a regular SBP spousal election. In effect, this means that remarriage of the former spouse before age 55 would revoke the SBP election or annuity; the annuity would be subject to the reduction to 35 percent of the base amount (under the two-tier system) at age 62 and any DIC payable to the former spouse (as a result of another marriage) will be offset against the annuity.

Section 625 of P.L. 100-456 included former spouses under the grandfathering provisions of SBP as contained in P.L. 99-145 for periods after Feb. 28, 1986.

Section 1407 of P.L. 101-189 provides that the alternative computation of the SBP annuity payable to former spouses 62 and older may be computed under Section 1451(e) of Title 10, United States Code, if the divorce of such former spouse became final on or after Nov. 29, 1989, and the former spouse is otherwise eligible to have his or her SBP annuity computed under Section 1451(e).

The SBP annuity entitlement, for a person who became a former spouse under a divorce that was made final before Nov. 30, 1989, is a two-tier SBP benefit. The first tier is equal to 55 percent of the SBP base amount for periods when the surviving former spouse is under age 62. The second tier is a reduction to 35 percent of the base amount for periods when the surviving former spouse is age 62 or older. However, certain qualified former spouse beneficiaries will not have their annuity entitlement reduced to 35 percent of the SBP base amount. Their entitlement will remain at the 55 percent tier. A qualified former spouse beneficiary is the former spouse of any service member who, on or before Oct. 1, 1985, was either a participant in the plan, entitled to retired pay, or qualified for retired pay except that such member has not applied for, or been granted that pay.

The "Military Survivor Benefits Improvement Act of 1989," P.L. 101-189, enacted Nov. 29, 1989, added a new dimension to the computation of the former spouse annuity benefit. The act amended the SBP to include consideration and application of a Social Security offset, provided the Social Security offset yields a greater annuity benefit than the 35 percent two-tier entitlement. The amendment applies only to a person who became a former spouse under a divorce that was made final after Nov. 29, 1989, and who is a qualified former spouse beneficiary as described

in the preceding paragraph. The annuity benefit under the Social Security offset is equal to 55 percent of the SBP base amount, less the amount of the Social Security survivor benefit attributable to the service member's active duty or active duty for training performed after Dec. 31, 1956.

To determine which benefit computation method provides the greater annuity payment, the two benefit amounts are compared. This comparison is made at the time the former spouse annuity entitlement commences, or when the former spouse reaches age 62, whichever occurs later.

Elections of SSBP for a Former Spouse Made Before Retirement

A person, upon electing to provide an SBP annuity to a former spouse at the time of retirement, may elect concurrently to provide an SSBP annuity for that former spouse by making a written election to do so. When making such an election before retirement, all procedures will be followed that are applicable to elections upon retirement to provide an SSBP annuity for a spouse.

Elections of SSBP for a Former Spouses Made after Retiring

Whenever a valid election is made after retirement to provide an SBP annuity at the maximum level to a former spouse, an election may simultaneously be made to provide that former spouse an SSBP annuity. Such election may be made whether an SSBP annuity had been elected for any spouse or former spouse coverage previously applicable to that person. If the election is for the same person for whom an SSBP annuity was being provided as a spouse beneficiary and at the same or higher percentage, the premium rates will be the same as under the election previously applicable to that person's SSBP election. However, if SSBP coverage is elected at a higher percentage than previously applicable, the SSBP premiums will be recomputed using the member's age on the birthday nearest the day such election becomes effective. In no case will the member be allowed to elect SSBP coverage for a former spouse without a valid election to provide an SBP annuity at the maximum level for that former spouse.

Deemed Elections for SSBP

Deemed elections shall operate under the same rules as deemed elections for SBP except that no election for SSBP may be required by court order. Deemed elections may be made only in instances in which there is a voluntary written agreement to do so made by the member concerned and properly incorporated in a court order or filed with the court of competent jurisdiction. No SSBP election may be deemed to have been made if the member would not have been eligible to make that election personally.

SSBP Elections: Duration of Effectiveness and Beneficiaries

An election to provide an SSBP annuity remains effective as long as SBP coverage remains effective for that spouse or former spouse, under Subchapter II, Chapter 73, Title 10, United States Code. Once effective, no election for SSBP may be revoked except by specific provision i.e. a spouse or former spouse beneficiary who is not eligible to receive an SBP annuity except when entitlement to the SBP annuity is lost under Section 1450(c), Title 10, United States Code, due to entitlement to Dependency and Indemnity Compensation (DIC).

Why People Join the Military Officers Association of America

MOAA is the nation's largest military officer association. Formed in 1929, it is dedicated to preserving the earned entitlements and benefits of members of the uniformed services and their families, and promoting a strong national defense.

The professional staff of Military Officers Association of America represents the membership to the White House, Congress, the Department of Defense and other government agencies. The staff also maintains close liaison with other military and veterans organizations in support of mutual objectives.

Each month members receive Military Officer Magazine, edited especially for the military community. Its columns keep MOAA members up to date with news from the Pentagon and Congress and it has items of personal interest to the readers. Feature articles range from national defense and current affairs to military history, travel, health, hobbies and second-career opportunities.

The "Washington Scene" column, written by MOAA's Government Relations staff, is must reading for most members. It keeps readers informed on actions within the Administration and Congress that affect military personnel, and on the Association's efforts to secure or defeat legislation of particular interest to the military community.

MOAA's professional staff also provides individual assistance in the following areas:

- Employment assistance.
- Personal affairs/survivor issues.
- Educational assistance loans.

MOAA is national in scope and there are more than 425 organized autonomous local chapters affiliated with the national organization. They are active in local and state affairs affecting military retirees.

Active, reserve, retired, former officers and warrant officers of the Army, Marine Corps, Navy, Air Force, Coast Guard, Public Health Service and National Oceanic and Atmospheric Administration are eligible to join. For more information, call toll free 1 (800) 234-6622 (MOAA) or visit our Web site at www.moaa.org.

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Help Your Survivors—Now! (formerly Help Your Surviving Spouse—Now!) A comprehensive description of military and VA survivor benefits; how to apply for them; what to do in an emergency. More than 1 million copies distributed to date.

Marketing Yourself for a Second Career. A practical guide for finding a new job. Includes helpful information on resume preparation.

National Guard/Reserve Retirement Benefits. A complete explanation of benefits available to reservists who qualify for military retired pay at age 60.

SBP: Yesterday and Today (formerly SBP Made Easy). A detailed explanation of the Survivor Benefit Plan and Supplemental SBP.

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Survivor Checklist. Helps remind family members and surviving spouses about the subjects that need attention at the time of death of a MOAA member.

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Planning for Military Retirement. A comprehensive reference for the service member, covering the essentials of retirement planning.

Military Service Credit Toward Civil Service Retirement. A concise description of how military service can be credited for federal civil service retirement purposes.

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Call (800) 234-6622 for a copy of each publication. Information also is available on MOAA's CHAMPUS and Medicare supplements as well as on other low-cost group health and life insurance plans.

